

**CHAPTER IV**  
**GENERAL REQUIREMENTS OF DIVISION AND DEVELOPMENT OF LAND**

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**§4.1 APPLICABILITY AND INTENT**

- A. Applicability - The provisions of this chapter shall apply to any division or development subject of this Ordinance.
  - B. The intent of this chapter is to establish procedures, requirements, minimum standards, specifications and acceptance criteria for the division and development of land in Benton County subject to the provisions of this Ordinance.
  - C. This includes but is not limited to the provision of access to lots and parcels, the provision of utilities, the subdividing of land into lots and blocks, and the parceling of land and development resulting in the need for access and utilities.
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**§4.2 – LAND USE AND DEVELOPMENT PATTERN**

Benton County is predominantly rural with the following existing land uses in the County. The Existing Land-Use Map-2013, attached as Appendix A herewith provides the land use pattern and distribution in Benton County:

- A. **Agricultural:** Agricultural land use and development as defined in chapter III are allowed by right and are exempt from the provisions of this Ordinance, except otherwise noted. Exceptions include commercial, farm-related developments including but not necessarily limited to livestock auctions, feedlots and holding pens, and compost facilities used for commercial sales.
  - B. **Single-Family Residential:** Subdivision of land into two or more parcels governed by the provisions of chapter V of this Ordinance. Construction of residential units requires a Building Permit only. Multifamily residential (example, apartments, condominium/co-op, institutional living) is required to comply with the provisions of chapter VI of this Ordinance.
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C. **Other:** All land uses other than single family residential and agricultural is governed by the provisions of chapter VI of this Ordinance. This category encompasses land uses such as:

- Residential land Use- including duplex, double duplex, townhomes, apartments, condominium and others
- Commercial land use- including minor or major commercial, professional office, general commercial and large office, large scale agritourism activities, and Regional commercial
- Industrial land use- including light industrial or heavy use
- Institutional land use –including schools, parks, church, cemetery, hospital, prison, treatment plants, military base
- Open space- places of assembly, parks, nature trails
- Others- telecommunication towers, utilities , temporary uses, and specific land uses

#### **DEVELOPMENT PATTERN**

Patterns of proposed new development must enhance or be consistent and compatible with existing development and the environment. Proposed new land uses should generally be compatible with existing land uses or be made so with reasonable mitigation measures, if feasible.

1. Land Use Compatibility. Development patterns must be consistent and compatible with existing development in the vicinity and the environment.
2. Clustering. Commercial and industrial developments are encouraged to cluster to minimize incompatible land-use. Commercial and industrial uses should locate where preexisting commercial and industrial uses have already been established, be located along major arterials or other roads or streets that have a commercial character, or have the services to support commercial uses.
3. Right to Farm. Any industrial and commercial development(s) that could limit the viability of existing agricultural uses is/are discouraged.
4. Right to Operate. Residential development that could limit the viability of existing commercial and industrial operations is discouraged.
5. Right to Residential Viability. Conversely, commercial and industrial development shall not negatively impact existing residential development or such impacts must be mitigated as per the nuisance abatement provisions below.
6. Establishment of New Use in Area Previously Lacking. The Board shall carefully review each proposal to establish a new use in an area where such land use did not previously exist for

appropriateness and compatibility. The Board should assess whether such proposed use may in itself reduce the value and viability of existing land uses or as a newly established use facilitate the conversion of the immediate vicinity to higher intensity uses.

#### **§4.3 – LOT SIZE AND BUILDING SETBACKS**

##### **A. Lot or Parcel Size**

All individual residential or non-residential lots or parcels for shall be minimum One (1) acre in size.

Lots or parcels that require both a septic system and water well shall be sufficiently size to satisfy State Health Department requirements. Minimum frontage shall be 120 feet.

##### **B. Building Setbacks**

###### **1. Minimum Setback**

No structures, as defined in chapter III- Definitions, shall be constructed or other improvements undertaken within the following minimum setback lines:

- a. Arterial Roads – Sixty-Five (65) feet measured from the centerline of the fronting arterial road as defined in chapter III or 25 feet from the fronting property line, whichever is greater.
- b. Collector Roads – Fifty-five (55) feet measured from the center line of the fronting collector road or twenty-five (25) feet from the fronting property line, whichever is greater.
- c. Local Roads – Fifty (50) feet measured from the centerline of the fronting local road or twenty-five (25) feet from the fronting property line, whichever is greater.
- d. Existing subdivisions – Which have been approved by the County prior to the effective date of this Ordinance with a lesser set-back than herein required, shall be permitted to observe the set-back as shown on the recorded plat.
- e. Covenants – Any setbacks or other dimensional requirements established privately by covenant or POA shall not be enforced by the County whether more or less stringent than County requirements.
- f. Side and Rear Yard Setbacks – The minimum side setbacks shall be 10 feet. All properties and tracts shall observe a minimum ten (10') foot setback from side and rear lot lines. The street side yard on a corner lot shall have a 25' setback.

- C. **Parking and loading area setback-** All parking area require a minimum five-foot landscaped setback to provide screening along the perimeter of off-street parking. Parking area may be defined by a barrier curb.

- D. **Outdoor storage** shall not be permitted in a required setback or in the front yard.

- E. All setbacks shall be maintained as vegetated open space in accordance with the provisions of this Ordinance.

#### **§4.4- NON-COMPLIANCE CLAUSE**

All man-made structures existing on the effective date of this Ordinance in the prohibited setback areas as defined herein shall be allowed to be continued until the structure shall be destroyed or abandoned, except any such man-made structure which is listed on a state or national register of historical places may be rebuilt or restored on the same site following destruction or abandonment

#### **§4.5- VARIATION PERMITTED**

The Planning Board may vary the requirements of this article if strict enforcement would cause undue hardship due to circumstances unique to the individual property under consideration and grant such variations only when it is demonstrated that such action will be in keeping with the spirit and intent of this article.

#### **§4.6 – GENERAL REQUIREMENTS OF DIVISION AND DEVELOPMENT OF LAND**

##### **1. FIRE AND SAFETY CODES**

All development and division of land must meet or exceed the current Arkansas Fire Prevention and Safety Codes.

##### **2. PUBLIC SERVICES**

Applicant shall document the anticipated impact to local services such as schools, roads and streets and other public infrastructure. A service agreement form from each service provider is required to verify the availability of utilities and services for the proposed development or divisor of land.

##### **3. ACCESS AND ADDRESSING**

**Access-** All parcels shall be accessed by a hard surface private or public road. Private roads will not be dedicated to the County nor maintained thereby.

All lots served by a private or public road must comply with the frontage and lot area requirements of this Ordinance.

In cases where the private road easement serves at least three (3) homes and is at least five Hundred (500) feet in length (measured from the intersection of the County/Public Road ROW to the furthest existing or proposed residential structure) the following shall be applicable:

- i. The developer shall be responsible for paying the County road department for the purchase and installation of a sign indicating that the road is maintained by the property owners.
- ii. The developer shall file for public record a "Private Road Maintenance Disclosure Statement" stating the following, NOTICE: THIS ROAD IS NOT CONSTRUCTED TO THE COUNTY STANDARDS. THE MAINTENANCE OF THE ROAD IS THE RESPONSIBILITY OF THE CURRENT AND FUTURE

PROPERTY OWNERS. THE ROAD WILL NOT BE ACCEPTED FOR MAINTENANCE BY THE COUNTY UNTIL IT IS CONSTRUCTED TO THE COUNTY STANDARD AT THE EXPENSE OF THE PROPERTY OWNERS (for Blue Sign Road only).

**Addressing-** New private road subdivisions must have their proposed private roads named according to 9-1-1 addressing prior to the final subdivision plat approval. The private road subdivision developer or applicant shall be responsible for erecting the street sign stating the name of the private road prior to final plat approval. All signs must be maintained by and replaced by the property owner. A replacement cost of \$40.00 will be assessed if the County replaces it.

#### 4. POSTING OF STREET ADDRESS

All improved commercial or residential buildings or properties shall be posted with a street address number assigned by E911. The street address number must meet the requirements of the Benton County Building Code, the provisions of Benton County Ordinance O-89-27 and the County 9-1-1 addressing requirements.

#### 5. EMERGENCY ACCESS

Access to all properties shall be provided to emergency service providers. Where possible, two means of emergency access shall be provided. Road improvements may be requested at the expense of the developer and subject to standards as set forth in County Ordinance 86-4 as amended. This shall include gated residential communities and non-residential properties that restrict access via gate or other security mechanism. The provision of access should be based on the type of entry system including but not restricted to the following:

- A. **Key Access:** Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the fire code official.
  - i. Locks: An approved lock shall be installed on gates or similar barriers when required by the fire code official.
  - ii. Key Box: Key boxes shall be located on the address side of the building to keep uniformity and shall be mounted no higher than five (5') feet above finished floor elevation.
- B. **Code Access:** Where access to or within a structure or an area is restricted because of electronically secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require the applicant to utilize a Knox-style electronic switch.
- C. **Chain/Lock Access:** Where access to or within a structure or an area is restricted because of chain/lock secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official shall require a Knox-style padlock or key box at the gate to gain access.

- D. **Fire Hydrants:** If fire hydrants are required by the appropriate Fire Official, the applicant shall provide a written confirmation indicating the proper placement, flow, and pressure throughout the development. Fire hydrants shall be installed in such a manner as to provide service throughout the entire development. Flow testing may be required to ensure adequate water pressure and availability of water for firefighting purposes. Commercial and industrial development must not be incompatible with available Emergency Services in the proposed area of development.
- E. **Anticipated Impact:** Applicant shall document the anticipated impact to local emergency services.
- F. **Acceptance to Service:** Written confirmation from the appropriate Fire Chief is required indicating acceptance to service the development.

## 6. EASEMENT

Easements of adequate width according to engineering or open space standards shall be provided for public use and utilities. Such easements shall have a minimum combined width of at least fifteen (15) feet along the front, side, and rear lot lines. Structures are prohibited to be constructed over a recorded easement and appropriate setbacks shall be maintained.

## 7. PROVISION OF WATER ON-SITE

All development shall confirm the provision of public or private source of water supply on-site. A plan view of the proposed water distribution system, showing pipe sizes and the location of valves and fire hydrants shall be shown. Private wells and waterline pipes shall be identified along with the capacity and size of the pipeline.

The water supply system shall be approved by the Arkansas Department of Health or its authorized agent and shall meet the requirements noted below, based on the availability of a public water supply:

- i. Available public water supply: When an approved public water supply is within fifteen hundred (1,500) feet of a land development, the Developer shall provide a potable water system with service to each individual lot within the land development.
- ii. Private water supply: When an approved public water supply is not within fifteen hundred (1,500) feet of a land development, another water supply system proposed by the developer must be approved by the Arkansas Department of Health in order to assure that the private water supply system will provide an adequate supply of potable water to every lot in the land development. On-site wells shall be approved by the Arkansas Department of Health.
- iii. Individual service lines and connections shall be made prior to the base and curb and gutter construction phase of the street improvement. Individual service lines and connections made prior to the base and curb and gutter phase may be installed by open trench construction provided all open cuts across the roadway portion are backfilled entirely with SB2. When individual service lines and connections are made after the pavement is completed, they shall be installed by boring only. Pavement cuts will not be allowed, except in extreme and unusual circumstances.

## 8. SANITARY SEWER SYSTEM

All development shall identify the provision of sewer system on-site. A plan view of the proposed sewers with grades and sizes, manholes, and outlets shall be shown. Other methods of sewage disposal should be indicated and detailed on the plans. All disposal system criteria must meet or exceed Arkansas State Board of Health Rules and Regulations pertaining to Onsite Wastewater systems.

The sanitary sewer system shall be approved by the Arkansas Department of Health and shall meet the requirements noted below, based on the accessibility of a public sanitary sewer system:

- i. Accessible public sanitary sewer system: When an approved public sanitary sewer system is reasonably accessible, the developer shall install a system of sanitary sewer mains and shall connect to such system, and each lot within the land development shall be provided with a connection to the public sanitary sewer system. The sanitary sewer system and connections shall be approved by the Arkansas Department of Health.
- ii. Community sanitary sewer systems: When an approved public sanitary sewer system is not reasonably accessible, the developer shall install a community sewage treatment system or plat the minimum lot size to accommodate individual sewage disposal systems. The community sewage system and/or minimum lot size and individual sewage disposal system shall meet the Arkansas Department of Health requirement for land development, and shall be approved by the Arkansas Department of Health.
- iii. Individual service lines and connections shall be made prior to the base and curb and gutter construction phase of the street improvement. Individual service lines and connections made prior to the base and curb and gutter phase may be installed by open trench construction provided all open cuts across the roadway portion are backfilled entirely with SB2. When individual service lines and connections are made after the pavement is completed, they shall be installed by boring only. Pavement cuts will not be allowed, except in extreme and unusual circumstances.
  - (a) Any land development as defined in this Ordinance that utilizes septic systems, also known as Individual Sewage Disposal Systems, must be designed so that the tank, lateral lines and alternate area are all located on one (1) lot, parcel, tract or dwelling unit.
  - (b) Only one (1) septic system shall be allowed on any lot, parcel, tract or dwelling unit.
  - (c) Any such septic system must be located on the lot, parcel, tract or dwelling unit to be served by said system.
  - (d) Alternative field, lateral lines, location of septic tank and clean out shall be identified on the plan/plat.

## 9. WASTE WATER DISPOSAL

All development shall identify the provision of waste water disposal system on-site. No industrial or commercial development operation shall discharge any wastewater or fluids of any kind into either surface or ground-water sources. Exception may be considered in cases where the Environmental Protection Agency (EPA) or Arkansas Department of Environmental Quality (ADEQ) has issued a permit

indicating that discharge is safe and/or that it has received adequate treatment prior to discharge. Evidence of such approval shall be provided.

- i. Waste Water Control. Developers shall produce a permit from the appropriate agency ensuring connection to an adequate public wastewater disposal system if reasonably available.
- ii. On-Site Sewage Disposal. Where connection to an adequate (approved) public wastewater (sanitary sewer systems) disposal system is not reasonably available, plans approved by the Arkansas Department of Health for use of an on-site wastewater treatment is required.
- iii. All facilities used for the collection , treatment, and renovation of wastewater shall be at least 100 feet from any source of domestic water supply, such as an on-site well and shall be at least 10 feet from any water service line, all property lines and any dwelling or building or structure. Such facilities shall not be located in a floodplain identified on the County's Flood Insurance Rate Maps (FIRM) panels.

#### 10. **ON- SITE STORMWATER MANAGEMENT**

All development shall identify the provision of Stormwater management facility on-site. Provisions shall be made for the safe disposal of storm water. Where initial construction does not provide for storm sewers, drainage ditches, and culverts of adequate capacity shall be installed. Facilities for storm drainage should be of adequate capacity to take care of not only surface run-off originating within the subdivision/area of development or flowing across but also consideration should be given to the consequences of total development should it occur in the upstream drainage area.

The developer shall construct storm sewers, drainage ditches, catch basins, and culverts of adequate capacity to convey not only surface run-off originating within the development or flowing across, but also consideration should be given to the consequence of total development should it occur in the upstream drainage area.

- A. All surface water drainage shall be transported to existing storm sewers, drainage facilities, or natural ditches and a drainage report certified by a registered professional engineer in Arkansas shall be provided to the satisfaction of the Planning Board.
- B. Rational Method for calculating storm run-off is to be used.
  - i. Off-Site Drainage. The developer shall provide an engineering study by a professional registered engineer of the off-site drainage and/or potential flooding problems that may be created by full development of the proposed project. The study area shall cover not less than 1000 feet outside the proposed development. The study shall be based on a 10 year storm event. Based on a specific location and existing drainage challenges, the Planning Board may require a study based on a 100 year storm event.

If the study identifies potential off-site flooding problems, the engineer shall submit with the drainage plan, off-site drainage plans to correct the problem (s) identified. The developer shall be responsible at his own expense for making those off-site improvements necessary to correct the drainage or flooding problems created by his development.



- ii. On-Site Storm Detention Facility. Where off-site study indicates an increase in the peak flow discharge downstream, the developer shall construct a detention system or other acceptable means whereby controlling peak run-off rate. An on-site storm drainage detention facility for 10 year storm frequency is acceptable on all commercial and industrial development.
- C. The engineer shall provide complete documentation concerning the selection of design frequency and criteria.
- D. The developer shall install storm drainage facilities, including drains, sewers, catch basins and culverts necessary for the proper drainage of all surface water, and serve the entire drainage area.
- E. All surface water drainage shall be transported to existing storm sewers, drainage facilities, or natural ditches or streams approved by the County Road Department.
- F. The developer is responsible for correcting any drainage or flooding problems occurring on adjacent or downhill or downstream property as a result of the development.
- G. A storm water detention plan for both on and off-site drainage shall be submitted as part of the overall drainage plan. Off-site storm water facilities constructed shall be maintained by the owner of record.

#### **11. NOTICE OF INTENT (NOI) AND STORM WATER POLLUTION PREVENTION PLAN (SWPPP)**

All development(s) disturbing one (1) acre or more must comply with storm water requirements as prescribed by the Arkansas Department of Environmental Quality (ADEQ).

For lots of an acre or more, and if the area to be disturbed is one acre or more and the stormwater is directed into State waters, then a "Notice of Intent" (NOI) shall be filed with the Arkansas Department of Environmental Quality (ADEQ) as per state law. A copy of the submitted NOI will be required to be received by the County prior to or at the latest at the preconstruction conference for the project before the project will be approved to begin construction. When a request is made to begin grading on a project prior to a preconstruction conference, the grading plan, erosion control plan and a copy of the submitted NOI will be required by the County for review for approval prior to grading commencing. Subject lands located within Benton County's MS4 jurisdiction shall additionally comply with the provisions of Chapter VIII of this Ordinance.

#### **12. SEDIMENTATION AND EROSION CONTROL**

Developers must minimize the area disturbed by construction activities at all times during construction activities and promptly re vegetate (or mechanically stabilize) areas disturbed by construction activities. Developers shall use commonly accepted standards to limit erosion and siltation. See Appendix B— Sediment and Erosion Control Best Management Practices.

#### **13. LOW IMPACT DEVELOPMENT (LID)**

All development in the County are encouraged to incorporate Low Impact Development (LID) options in the design and development of projects. Low Impact Development is an ecologically based Stormwater management approach contrary to conventional "pipe-and-pond" conveyance infrastructure that

channels Stormwater run-off through pipes, catchment basins, and curbs and gutters. LID remediates stormwater run-off through a network of distributed landscape network to reduce and treat stormwater runoff before it enters receiving water bodies.

LID site design begins with hydrological modeling based upon local geography, soil types, vegetation, and watershed catchment pattern. Conventional hard engineering based universal protocols for runoff evacuation favors costly peak demand design over context sensitive design. LID features include provision of porous surfaces, reduction of impervious surfaces, provision of strategically placed rain gardens and LID easements at the front of the property comprising of a network of connected landscape areas/bioswales for improving the quantity and quality of runoff in the drainage ditches. See Appendix C - LID Design alternatives.

#### **14. ENVIRONMENTAL COMPLIANCE**

The Planning Board reserves the right to require written confirmation from the appropriate agency(ies) confirming the developer's compliance with any and all environmental regulations including but not limited to: air pollution codes (quality), hazardous chemical(s) management and disposal, above and belowground storage tanks, compliance with historical, cultural, and archeological preservation issues, threatened/endangered species of state-wide and/or national importance, and any other concerns applicable to the issuances of a development permit.

#### **15. OPEN SPACE**

All areas of open space such as parks, playgrounds, recreational areas or green spaces for any purpose and any natural features to be preserved shall be designated. The following shall not be considered as useable open space.

- A. The surface area of parking lots including driveways;
- B. The area occupied by structures (excluding structures used for recreational purposes);
- C. Any lot intended for private ownership;
- D. Street surface area.

The maintenance of all private open space shall be the responsibility of the developer or of a property owners association and the method for maintenance and a maintenance fund shall be established in the PUD covenants by an escrow fund, property owner's association, or other such means.

#### **16. LANDSCAPING AND BUFFERS**

- A. **Landscaping-** Benton County has developed a comprehensive set of landscaping guidelines for commercial and other non-residential development that is based on a native plan regime (see Appendix A for the comprehensive set of guidelines). These guidelines have been established as a service to developers and property owners so that selected plant materials will be optimally suited to the soils and climate of Northwest Arkansas. This should minimize cost of acquisition, installation, and maintenance and reduce the need for supplemental watering and the cost associated with water use for landscaping.

All required setbacks are required to be maintained as landscaped open space. All parking areas require a minimum five-foot landscaped setback to provide screening along the perimeter of off-

street parking. Landscape setbacks and other peripheral green areas are usually defined by a barrier curb. Wheel stops or breaks in the barrier curb may be provided in order to allow for drainage into peripheral green areas designed to accommodate the stormwater discharge directed to them. Setback areas that are to be used for stormwater management will need to be designed for both stormwater discharge and screen requirements. No drainage may be directed onto the public way.

Existing healthy trees shall be preserved wherever possible. If a tree is removed, mitigation trees of at least equal value as that of the removed tree shall be provided as determined by the City Forester. New trees that are part of a new development project and infill plantings shall be at least 1.5 to 2-inch caliper.

- B. **Native Vegetation-** which can include grasses, forbes (wild flowers), shrubs, and trees are an excellent choice for landscaping and are encouraged as they have adapted to the area to survive a wide range of conditions ranging from hot and dry to moist. Densely rooted native plants are tolerant to the native conditions and once established, require less maintenance and watering. they also trap and use nutrients such as nitrates and phosphates that otherwise would become run off and pollute nearby streams. Following table lists some of the native vegetation that may be used in a development. See Appendix D- Suggested list of Native Vegetation.
- C. **Buffering and Screening** – All parking, loading, refuse enclosure outdoor storage and other service areas shall be screened from adjoining public or private roads or residential or other sensitive land uses.

Buffering and screening requirements may include any combination of the following: landscape width, plantings, fencing and berms. To achieve the desired buffering and screening the following minimum acceptable size for plant materials is suggested:

- Deciduous Trees – Two (2") inch caliper
- Coniferous Trees – Five (5') feet in height
- Shrubs – Two (2') feet in height

Shrubs required for screening must have a minimum height of five (5") inches. All trees should be wire basket, B & B, or container grown. Deciduous trees planted in a row will be centered at ten (10') feet maximum. Smaller flowering trees and ornamentals will be centered at four (4') feet maximum. Coniferous trees will be centered at four (4') feet to five (5') feet depending on desired effect.

All shrubs are to be planted in continuous planting beds. Planting beds will be mulched to a minimum depth of three (3") inches and will be maintained weed free. Plantings consisting of trees and shrubs will be a minimum of 50% coniferous plantings.

## 17. OFF-SITE ROAD AND OTHER IMPROVEMENTS

Existing County roads: When a proposed land development causes a need for improvements to off-site roads and dedication of right-of-way, the developer shall be responsible in conformance with County standards for the following:

In all cases, for the entire length of the proposed land development, the developer shall dedicate road width as identified in a Traffic Study. For unusual alignment or terrain conditions, the Planning Board and/or County Judge may require a greater width of right-of-way dedication. The required width of right-of-way dedication shall be determined during the Planning Board review and approval stage; in any event said dedication must bear a reasonable relationship to the needs created by the proposed land development.

When the proposed development is of a size and magnitude to show cause for additional off-site road improvements that the County does not have in its annual Plan, any off-site road shall be improved by and at the expense of the Developer in accordance with County standards;

The road improvement cost shall include, but not be limited to, the costs of right-of-way clearing, roadway excavation and embankment, bridges, pipe and box culverts, and all other improvements as required by the County Road Department.

#### **18. GATED COMMUNITIES**

- i. A gated community or subdivision is a residential or non-residential area containing more than two (2) lots in which access to the subdivision streets is restricted by the use of a guard house or electronic arm and in which residents may gain entry by using electronic cards, identification stickers, codes, or remote control devices. This definition of gated community shall also include large scale developments, residential or otherwise.
- ii. As it is unlawful to block public roads, roads in said communities or subdivisions must be private and thus the County will not accept the roads or streets for maintenance.
- iii. As there is a possibility in the future that gates may be removed and the residents may desire that the County accept the roads and streets; said roads and streets must still be built to the specifications outlined in the Benton County Road Plan.
- iv. Emergency access provisions shall be in compliance.

#### **§4.7 – PERFORMANCE STANDARDS**

This Ordinance establishes specific performance standards to ensure compatibility of adjacent land uses. Performance standards are provided for each development type as applicable herein.

Potential off-site nuisances shall be mitigated or abated by appropriate means. The means of mitigation shall be presented in detail and submitted with the application for a permit. The default standard for compatibility is that there are no off-site impacts exceeding pre-development conditions. Some impacts may be anticipated but not mitigated at the pre-development stage. Decisions shall reflect that applicants shall be responsible for addressing post-development nuisances. Any nuisance arising from a development requires appropriate mitigation. Furthermore, the inability of a project to meet the mitigation measures will deem the development incompatible. Examples of potential nuisance may include but is not necessarily limited to the following.

- A. **Noise:** no proposed use may create levels of noise that is hazardous or disruptive to the peace and enjoyment of adjacent properties. Three specific factors determine the impact of noise: intensity, frequency, and duration.

1. Intensity: measured in decibels (dB) on a logarithmic scale.
2. Frequency: measured in hertz (Hz) relates to the number of cycles per second of a sound wave.
3. Duration: The length of time that a specific sound lasts.

Noise abatement might include but not be limited to noise barriers, limitation of the noise external to buildings, reduction of the activity, or other means appropriate to the site or noise-generating activity.

- B. **Vibration:** Excessive vibrations can disrupt daily community activities and over a prolonged period of time they can weaken or damage structures. Benton County may determine that perceptible vibrations at the property line constitute a nuisance. If vibrations are expected to be an impact from the proposed development or use, the Board may require a Vibration Study for the project.
- C. **Electrical Interference:** No use may interfere with the normal operation of radios, televisions, or other common electronic devices. Any equipment regulated by the FCC shall comply in full with said regulations.
- D. **Light and Glare:** No proposed use should result in excessive light and/or glare (or light patterns such as pulse or strobe) spilling onto adjacent properties that disrupts quality of life including rest or sleep or creates adverse physical or psychological impacts. Mitigation might include but not be limited to buffers or screening, light shielding, reduction in ambient light level produced, using different lighting methods, or other means appropriate to the site or glare-generating activity. A photometric plan may be required indicating that no lumens cross property lines.
- E. **Heat:** No proposed use should result in excessive heat emanating onto adjacent properties. Mitigation might include but not be limited to buffers or screening, shielding, reduction in heat level produced, using different heating methods, or other means appropriate to the site or heat-generating activity.
- F. **Fire or Explosion Hazard:** Uses that may create a likelihood of fire or explosion shall be reviewed by the appropriate fire department, the County Fire Marshal, and the Emergency Management Department. The scale or type of material may require external review by expert consultant which may be at the expense of the applicant. Mitigation may include the type of fire protection equipment to be required on site such as sprinkler systems or fire extinguishers. It may also cover the types of containers that such materials may be housed based on the degree of danger each may pose.
- G. **Noxious Fumes and Odors:** No noxious fumes, bad odors, or other vapors or billow should emanate from a subject property onto an adjacent property. Mitigation might include but not be limited to buffers or screening, filters, or other means appropriate to the site or fume/odor-generating activity.

- H. **Dust and Other Particulates:** No dust, particulates, or smoky billow should emanate from a subject property onto an adjacent property. Such air pollution is generally regulated at the federal or state level and, at minimum, uses that generate air pollutants are expected to meet these standards. Additional mitigation may be required locally based on specific established land uses adjacent and proximal to the proposed generating use. Mitigation might include but not be limited to buffers or screening, smoke filters, scrubbers, or other means appropriate to the dust or smoke-generating activity.
- I. **Toxic or Hazardous Materials:** No activity shall dispose of or inappropriately store or use hazardous, toxic, or damaging chemicals or other materials. Mitigation shall be based on the specific material and the specific site including the current surrounding land uses. Review shall be, at minimum, conducted by the appropriate fire department, the County Fire Marshal, and the Emergency Management Department. The scale or type of material may require external review by expert consultant which may be at the expense of the applicant.
- J. **Water or Soil Contamination:** No activity shall dispose of or inappropriately store hazardous, toxic, or damaging chemicals or other materials that contaminates the soil, groundwater, water bodies, wells, or other forms of earth or water. Consideration should be provided to the protection of natural resources, such as, Beaver Lake, a source of drinking water to the area. Mitigation can include reducing or eliminating the material on site, changing to a non-toxic substitute, the creation of appropriate storage facilities including but not limited to berms, filters, lining, concrete pads with suitable drains and filters, and/or other means appropriate to the location or contaminating activity. In some cases, the applicant may be required to remediate existing contamination prior to securing approval.
- K. **Safety and Security:** No use shall result in the creation of an unmitigated security or safety risk resulting from a resident population, visitor population, the externalization of projectiles, debris, or other material leaving the property, or any other phenomenon that results in an increased safety or security risk to others outside of the property where the activity is taking place. Mitigation measures may include but not be limited to prevention of any projectiles leaving the property and shall result in elimination of risk to external properties..
- L. **Wastewater:** Any parcel or tract of land subject to the uses of land listed in §4.3 (C, and D) shall have suitable provisions for adequate wastewater removal. This shall include either a connection to a sewer system with adequate capacity to add the new land use or a septic system adequate to service the planned needs of the use. For any septic system, the parcel or tract must be able to perc and provide a primary and secondary septic field as per the requirements of the County Health Department.
- M. **Other Uses:** All other nuisance as applicable or specific to the proposed development may require appropriate mitigation to the satisfaction of the Planning Board.

#### **§4.8 – PUBLIC HEARINGS**

##### **A. Applicability**

A public hearing shall be required of all applications for the following development review cases:

1. Major subdivision- Preliminary subdivision plat and Final subdivision plat

2. Telecommunications facilities (as applicable)
3. Mobile home park
4. Planned Unit Development
5. Development Master Plan
6. Site plan review (as applicable)

Public hearings may not be applicable to the following:

1. Minor subdivision
2. Lot line adjustment or lot recombination
3. Any other application subject to administrative approval as per this Ordinance.

#### **B. Procedures**

Public hearings shall adhere to the procedures established as follows:

1. Notice for Public Hearing:

- a. Notice to Adjacent and Proximal Properties: Notice shall be sent by the applicant to all property owners within a 500 feet radius from the property line, based on current records of the Assessor's database, via certified mail with return receipt. Such notice shall be sent no less than fourteen (14) days prior to the scheduled public hearing. Planning staff may notify additional property owners as directed by the Planning Board.
- b. Notice Posted: The Planning staff shall post the notice of public hearing at the County Administration Building as well as on the County's website calendar at least 48 hours prior to the convening of the public hearing.
- c. Public Hearing Sign: The applicant shall install a public hearing notice sign on each street frontage of the subject property. Requirements for posting the sign shall be as follows:
  - i. Sign shall be minimum 4 feet x 8 feet in dimension and shall contain the following information: location of the proposed development, site plan, meeting date and location. See Appendix E - Public Notice Sign template.
  - ii. Sign shall be posted in a location clearly visible, accessible, and readable from the adjacent right-of-way.
  - iii. Sign shall be posted at least fourteen (14) days prior to the public hearing. Administrative applications shall be posted for minimum of one (1) week upon making application.
  - iv. Signs shall remain in place until after the date of the hearing.
  - v. Each frontage of the subject property shall contain one notice sign per 300 feet of road frontage.

- d. **Courtesy Notice:** The Planning staff shall also notify the media, the Quorum Court, The County Judge, and County Administrators of the agenda of the Planning Board meeting including both TAC and Public Hearing agendas.
2. **Public Hearing:** Once an application has been cleared by the Planning Board as ready for public hearing, staff shall move the item from the TAC to the Public Hearing portion of the agenda. The Board shall hear the item within a scheduled public hearing as per the provisions of the bylaws of the Planning Board. The public hearing shall be concluded prior to the vote of the Board. This may be conducted in one of two ways:
  - a. The Board may open each application item as a separate public hearing and vote upon conclusion and closing of the public hearing after which no further public comment may be taken, or
  - b. The Board may hear each application under the public hearing portion of the agenda and close the public hearing after which the Board may vote on all of the items deliberated on during the open public hearing.

#### **§4.9 – DEVELOPMENT REVIEW COMMITTEE**

- A. **Generally:** Prior to undertaking any development or use of non-exempted land in unincorporated Benton County, a development approval shall be obtained in accordance with the policies of this Ordinance.

The Development Review Committee is established to provide the public with an opportunity to meet with staff members from each County agency and members of other jurisdictional agencies in order to discuss their project in detail.

- B. **Development Review Committee Membership:** The DRC is composed of a chairperson and a designated representative from each of the following entities as applicable:

- |                         |   |
|-------------------------|---|
| 1. Planning             | 9. Environmental Services                   |
| 2. Road Department      | 10. School Department                       |
| 3. Emergency Management | 11. And other jurisdictional agencies, such |
| 4. Fire District        | as the Sheriff's Department; ADHD,          |
| 5. Fire Marshal         | ADEQ, Water District, are notified of       |
| 6. Health Department    | applications submitted to Benton            |
| 7. Utilities            | County for review.                          |
| 8. E-911/Addressing     |   |

- C. **Procedures:** The following procedures shall be followed for review of a development proposal by the Development Review Committee:

1. **Submittal of Plans:** Applicants seeking development approval shall contact the Planning Department prior to a scheduled DRC meeting along with a preliminary plan with sufficient detail to allow all agencies to review and comment in regard to all elements of the development.



2. **Committee Meeting:** On the scheduled date, the DRC shall meet to discuss the plan submittal. The meeting shall be conducted as follows:
  - a. Convene Meeting
  - b. Applicant Presentation
  - c. Review Agency Discussion: Each review agency shall provide a brief report and submit their memorandum to the DRC chair. Discussion may include addressing any conflicting comments or prescriptions.
  - d. Application: The applicant will submit a complete application packet to the planning Department for review.

#### **§4.10 - ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS**

To ensure that the County has the assurance that the construction and installation of site improvements such as street surfacing, curbs, gutters, storm sewers and appurtenances, sanitary sewer, waterlines, street lighting, street signs and other required improvements, the owner/subdivider/developer shall provide performance surety.

- A. **Approval with Financial Performance Guarantee (FPG)-** Before final approval of the Final Plat of subdivision by the Planning Board, the owner shall agree to complete the required improvements and guarantee installation of any standard or special conditions applied by the Planning Board as shall be provided in the Letter of Decision for the subdivision and for all lots in the subdivision. The County will accept the subdivision and issue a Certificate of Final Plat approval subject to the following guarantee requirements:
- B. **Performance Surety-** The owner/developer shall furnish either a bond, executed by a surety company, cash deposit (certified or cashier's check), escrow account, or Irrevocable Letter of Credit (form must be approved by the County Attorney) equal to the cost of construction of such improvements as shown on the plans, and based on a detailed, itemized estimate certified by a registered professional engineer in Arkansas.
  - a. **Amount:** The owner/developer shall file a performance surety in an amount determined by the Planning Board in consultation with the appropriate County departments and other agencies (or contracted consultants at the applicants expense, as necessary), to be sufficient to cover the cost of all or any part of the improvements specified in this Ordinance and to cover the costs of inspections, record plans, street acceptance plans, and legal work, and a 20% contingency/inflation factor. Warranty principal shall be equal to the estimated cost of those components of the entire project which shall be dedicated for public or common use and shall cover workmanship and materials.

Surety bonds must be drafted so that the only requirement that must be met for the Planning Board to draw on the letter is to notify the financial institution (grantor) that:

*"We have incurred liability by reason of the failure of the applicant/developer/owner, within ninety days of the expiration of this letter, to complete the construction of their*

*project (insert name of subdivision and plans) in accordance with the final subdivision plans and submittal, the subdivision approval decision letter, and the Benton County Subdivision Regulations. The amount drawn, which may be more than required to complete the project, will be held in a segregated bank account until the work can be bid competitively and the bid awarded and paid for or until the contract for the work is otherwise let and the work paid for. Any excess over the cost of completing the work will be returned to the grantor."*

Such bond shall be approved as to form, the surety or financial institution, and manner of execution by the County. For any surety bond:

- i. The surety must agree that any litigation stemming out of the bond will take place in Arkansas.
- ii. The bond must include the name and address of the person to be served for any legal action.
- iii. The amount shall be sufficient to cover the costs of completion of all project infrastructure including streets and roads, curb and gutter, culverts and other stormwater facilities, landscaping and buffers, required park or recreational amenities, and any other element of the approved project.

Surety bonds shall be submitted to the planning department and held by the Treasurer until such time performance warrants release.

- C. **Term-** the performance surety shall be deposited immediately upon the issuance of a decision letter, prior to recording the Plat with the County Circuit Clerk office. The bond shall be valid until the work is complete. No expiration date may be allowed in the term.

Alternatively, the performance bond shall be issued for a term of two years and be automatically extendable for two years from the date of execution. Before such bond is accepted it shall be approved by the County Attorney.

The performance surety, as previously described herein, shall be contingent upon the completion of such improvements, and the required (1) one year warranty on same as required in this Ordinance within a maximum period of three (3) years of the date of such surety. There shall be at least a three (3) month period between the completion date of all improvements and (1) one year warranty period and the expiration date of any bond. Said three (3) month period shall give the County the opportunity to collect the financial performance guarantee so that it will be able to complete the necessary improvements in case (a) the developer is unable to do so; and/or (b) the Planning Board denies any requests for an extension of time. The term "Warranty" shall apply to and include all workmanship and materials.

- D. **Extension of Term:** Upon written request from the applicant, the Planning Board may, at its discretion, grant an extension of time, and such agreement shall be executed and affixed to the FPG. Such an agreement for an extension shall not be effective until the surety delivers to the Planning Board a written statement that the surety agrees to the proposed alteration of the completion schedule and that such alteration shall not relieve or affect the liability of the surety company.

E. **Failure to complete all improvements** as required by these provisions within the time allotted shall cause the Planning Board to:

- i. Draw upon the performance guarantee in order to complete said improvements; and/or
- ii. Schedule a Public Hearing in order to rescind approval of the subdivision in accordance with appropriate sections of these regulations.

F. **Inspection of Improvements**

Planning staff shall conduct periodic inspections during the installation of improvements to ensure conformity with the approved plans and specifications as required by the Planning Board.

The owner/developer shall notify planning staff at least 24 hours before each phase of the improvements is ready for inspection. The County will require improvement inspection fees in accordance with the Fee Schedule.

G. **Maintenance of Improvements**

The owner/developer shall be required to maintain all improvements, if required, until approval of said improvements. Once the required improvements have been constructed and approved in the subdivision by the County, and prior to the release of the performance surety, the subdivider shall post with the County a maintenance surety in the amount of 20% of the original performance in a form as approved by the County Attorney.

The owner/developer shall be responsible for the maintenance of the improvements installed. This maintenance shall include, but not be limited to, winter maintenance items such as snow and ice control, erosion and sediment control measures, debris, and mud tracking onto the County road system.

The owner/developer shall be responsible for all routine maintenance during the maintenance period. This shall include, but is not limited to, mud tracking, erosion and sediment control, any items relating to public safety and convenience, any items identified by the County Officials as part of the acceptance process, repair, and corrections of failures due to faulty construction or design. The subdivider shall also make repairs needed due to work done by utility companies in the installation of utilities and shall repair all failures, which occur for any other reason during the guarantee period.

Failure to comply with the above items may result in forfeiture of the maintenance guarantee and other legal action if warranted.

A. **Maintenance Scope:** All elements associated with development approvals (hereafter referred to as approval elements) such as infrastructure, landscaping, screening and buffering, mitigation measures generally, design criteria, etc. shall be properly and functionally maintained in perpetuity or the term of the development subject to the approval.

B. **Maintenance Responsibility:** The responsibility for maintaining approval elements shall rest with the owner of the property. While the property or buildings and structures may be leased, the

responsibility for any violation of this Ordinance, including failure to maintain approval elements, solely rests with the owner. Note that any sale of the property short of fee simple will not transfer the responsibility for a property from a current owner.

- C. **Maintenance Standards:** Approval elements shall be properly maintained in a condition or state that is functional, not unsightly or deteriorated or degraded, meets the purpose for which it is intended, and if plant material, shall be kept in a healthy condition.
- D. **Maintenance Guarantee** -The County shall retain 20% of the principle amount for all the improvements as a maintenance surety for a year after the release of performance guarantee to ensure maintenance of all aspects of approval, such as, landscaping, curb gutters, sidewalks, paving and others .

#### **§4.11 - RELEASE OF PERFORMANCE GUARANTEE**

1. **Procedures for Release.** The subdivider may, upon completion and installation of required improvements in a subdivision, the completion of record plans and street acceptance plans, as specified in this Ordinance and the completion of a one (1) year labor and materials warranty period make formal application, in writing, to the Planning Board for full release of any outstanding performance guarantee, before the Planning Board releases the full interest of the County in said performance guarantee.
2. **Certificate of completion** – The owner/ developer shall submit certificate or statement supplied by the project's registered professional engineer that that the work has been completed in compliance with these regulations. The Planning Board may obtain in writing from the Road Department or from a registered professional engineer chosen by the Planning Board, a Certificate of Completion (see Appendix F) that all work required by this Ordinance has been constructed in conformance with the approved construction plans.
  - a. The applicant shall present the Planning Board with letters from the water, electric, telephone, gas and cable TV companies (as applicable) stating that their respective underground systems have been installed to their satisfaction.
  - b. Obtain from the applicant a set of record construction plans. Approval of said plans by the Planning Board shall take place after review of the former by the Road Department.
  - c. Receive from the applicant street acceptance plan or plans and necessary documents. Said plans and documents, after approval by the Planning Board and the Road Department, shall be presented by the Planning Board to the County Judge for a formal road acceptance.
  - d. **Dedication of Utilities:** The applicant may be required to execute an instrument, in a form approved by the Planning Board, transferring to the County or to an approved public utility company, without cost, valid unencumbered title to all applicable sanitary sewers, water mains, and appurtenances thereto, and other utilities constructed and installed in the subdivision of approved portion thereof, and conveying to the County or to an approved public utility company without cost and free of all liens and encumbrances, perpetual rights and easements to construct, inspect, repair, renew, replace, operate and

forever maintain such sanitary sewers, water mains and other utilities, with any manholes, conduits, and other appurtenances, and to do all acts incidental thereto, in, through, and under the whole of all streets in the subdivision or approved portion thereof, and if any such sewers or water mains have been constructed and installed in land not within such streets, then in, through, and under a strip of land extending fifteen (15) feet in width on each side of the centerline of all such sewers and water mains. The Planning Board may require greater than fifteen (15) feet in width on each side of the centerline where it deems necessary.

3. **Final inspection** – The planning staff or other County department shall conduct a final inspection prior to releasing the guarantee.
4. **Release of performance surety** – If the Planning Board determines that all improvements as shown on the approved Final Plan and all required plans and legal documents have been completed satisfactorily, it shall release all the interest of the County in such performance guarantee and return the bond to the person who furnished the same.
5. **Failure to complete improvements**- If the Planning Board determines after inspection that said construction or installation has not been completed, or wherein said construction or installation fails to comply with these Regulations, the Planning Board shall send by registered mail to the applicant and to the County Clerk the details wherein said construction or installation fails to comply with its rules.
  - a. The applicant shall have thirty (30) days after receipt of such notice to correct all problems mentioned in the above. Failure of the applicant to finish all the necessary work within said thirty (30) days shall cause the Planning Board to draw upon the bond deposit of money as mentioned below.
  - b. Any such bond may be enforced by the Planning Board for the benefit of Benton County upon failure of the performance for which any bond was given to the extent of the reasonable cost to the County of completing such construction and installation.
  - c. Review and sign off from the Planning staff that any required landscaping has been installed in accordance with the approved subdivision. Additionally a statement from an arborist or certified nurseryman indicating that the plantings and post-planting care has been performed in conformance with the Decision of the Planning Board. Alternatively a three (3) year warranty period from the time of the installation of plantings or replacement of original plantings may be offered.
6. **Recording of Plan.** The applicant, with a representative of the Planning Board present, shall, within ten (10) days after the final As-Built Plan has been endorsed, record said plan, Form F, and whenever applicable, the Planning Board's Letter of Decision, public easements (plans and documents), restrictive covenants, master deeds, etc., at the Benton County Circuit Clerk. The cost of said recording shall be borne by the applicant.

#### **§4.12 – RESERVED**